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Supreme Court, U.S.
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NO.

in the Supreme Court of the United States

October Term, 1987

RONALD GREGORY FARAH

Petitioner,

vs.

STATE OF FLORIDA

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE DISTRICT COURT OF APPEAL OF FLORIDA, FOURTH DISTRICT

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QUESTION PRESENTED

WHETHER THE TRIAL COURT ERRED IN DENYING THE PETITIONER'S MOTION TO DISMISS FOR FAILURE OF THE STATE TO PRESERVE THE ONLY TANGIBLE EVIDENCE WHICH ESTABLISHED THE DEFENDANT'S GUILT OR INNOCENCE AFTER HAVING BEEN ORDERED BY THE TRIAL COURT TO PRESERVE THIS EVIDENCE.

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RONALD GREGORY FARAH

Petitioner,

vs.

STATE OF FLORIDA

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE DISTRICT COURT OF APPEAL OF FLORIDA, FOURTH DISTRICT

Petitioner, RONALD GREGORY FARAH, respectfully prays that a writ of certiorari issue to

review the judgment and opinion of the District Court of Appeal of the State of Florida, Fourth District, rendered July 8, 1987.

JURISDICTIONAL STATEMENT

RONALD GREGORY FARAH, the Petitioner, appeals from the decision of the District Court of Appeal of Florida, Fourth District, dated July 8, 1987, affirming *per curiam* the order of the Circuit Court of the Seventeenth Judicial Circuit of Florida, dated April 4, 1986, denying the Defendant's Motion to Dismiss Information Due to State's Failure to Preserve Evidence as violative of the Petitioner's due process rights under the Fifth and Fourteenth Amendments to the Constitution of the United States.

OPINION BELOW

The District Court of Appeal of the State of Florida, Fourth District, issued a decision filed July 8, 1987, affirming *per curiam* the Petitioner's conviction, attached hereto as Appendix 1. Attached as Appendix 6-7 is the Order Denying Motion to Dismiss Information Due to State's Failure to Preserve Evidence, dated April 4, 1986.

JURISDICTION

Jurisdiction of this Court is invoked under 28 U.S.C. sec. 1257(3) to review the decision of the District Court of Appeal of Florida, Fourth District, rendered on July 8, 1987, the highest state court with jurisdiction to pass upon this issue. A timely Petition for Rehearing and

Suggestion for Rehearing *En Banc* was denied on September 16, 1987, and this Petition for Certiorari was filed within sixty days of that date.

CONSTITUTIONAL PROVISIONS INVOLVED

This case involves the Fifth, Sixth and Fourteenth Amendments to the Constitution of the United States.

RAISING THE FEDERAL QUESTION

The Petitioner, RONALD GREGORY FARAH, at the earliest possible stage of the trial proceeding below, raised the claim in a Motion to Dismiss the Information Due to State's Failure to Preserve Evidence that he had been denied the protections afforded him under the due process guarantees of the Fifth and Fourteenth Amendments to the Constitution of the United States of America. The trial court, by order, ruled on the merits of Petitioner's Motion, denying the Motion to Dismiss. The claims under the Fifth and Fourteenth Amendments were again raised before the District Court of Appeal of Florida, Fourth District, which affirmed the trial court's ruling.

STATEMENT OF THE CASE

The Defendant, RONALD GREGORY FARAH, was one of six named Defendants in a six-Count Indictment charged with conspiracy to traffick in cannabis in violation of sec. 893.135(4), Florida Stat. (1983) and trafficking in cannabis, in violation of sec. 893.135(1)(a)(2), Fla. Stat. (1983).

On August 27, 1984, the Defendant filed his Demand for Discovery pursuant to Fla.R.Crim.P. 3.220, and a Motion to Preserve Evidence. (Appendix 8). The Motion to Preserve Evidence was partly granted, and on September 24, 1984, the Court ordered the State "to preserve and retain intact and not to destroy or alter any and all evidence (including) . . . money." (Appendix 2).

On May 15, 1985, the Defendant notified the prosecutor he wished to have a qualified expert inspect the money seized for the purpose of lifting of latent fingerprints and comparing latent to standard fingerprints. (Appendix 29-30). The State responded on May 31, 1985 that the "money" had not been preserved, and in fact had been deposited in a bank, thereby precluding the Defendant from having a qualified expert of his choice examine the same in order to assist him in the preparation of his defense.

The Defendant filed a Motion to Dismiss Information due to the State's failure to preserve evidence as previously ordered by the Court, together with Exhibits attached thereon and Memorandum of Law in support thereof filed on June 13, 1985. (Appendix, 10-46). On April 14, 1986, the trial court denied this Motion. (Appendix 6). The Petitioner and the State agreed that the Motion to Dismiss for failure to preserve evidence was dispositive as to all charges in the Information.

On April 4, 1986, the Defendant, pursuant to a negotiated plea, entered a plea of nolo contendere to the reduced charges of conspiracy to possess marijuana as

to Count I and attempted trafficking in marijuana as to Count II. He was adjudicated guilty and sentenced to time served as to Count I and to three years in the Florida State Penitentiary as to Count II. The Defendant specifically reserved his right to appeal the trial court's denial of the previously mentioned Motion to Dismiss.

An appeal was taken to the District Court of Appeal of Florida, Fourth District, which affirmed the lower Court's findings. (Appendix 1).

Petitioner moved the District Court of Appeal of Florida, Fourth District, for a rehearing, which petition was denied.

This timely Petition for Writ of Certiorari follows.

REASONS FOR GRANTING THE WRIT

The Fifth Amendment to the United States Constitution provides in pertinent part:

> No person shall be . . . deprived of life, liberty or property, without due process of law.

The Fourteenth Amendment again mentioned due process when delineating the State's powers:

> [N]or shall any State deprive any person of life, liberty, or property, without due process of law.

Due Process requires the prosecutor to give defense counsel upon request any information favorable to the accused that is within the prosecutor's possession and

is material to the Defendant's guilt or to sentencing. *Brady v. Maryland,* 373 U.S. 83, 87, 83 S.Ct. 1194, 1196, 10 L.Ed.2d 215 (1963). The standard determining materiality is whether the requested evidence might have affected the outcome of the trial. *United States v. Bagley,* 473 U.S. ____, 87 L.Ed.2d 481, 105 S.Ct. 3375 (1985); *United States v. Agurs,* 427 U.S. 97, 104, 96 S.Ct. 2392, 2397, 49 L.Ed.2d 342 (1976). If the omitted evidence creates a reasonable doubt that did not otherwise exist, constitutional error has been committed and reversal is proper. *United States v. Agurs,* 96 S.Ct. at 2402.

The omission must be evaluated in the context of the entired record. *Id.* If the verdict is of questionable validity, additional evidence even of relatively minor importance might be sufficient to create a reasonable doubt. *Id.*

Evidence "favorable to the accused" i.e., exculpatory evidence, includes material that goes to the heart of the Defendant's guilt or innocence, as well as that which might well alter the jury's judgment concerning the credibility of a crucial witness. *Giglio v. United States,* 405 U.S. 150, 154, 92 S.Ct. 763, 766, 31 L.Ed.2d 104 (1972); *United States v. Starusko,* 729 F.2d 256, 260 (3d Cir. 1984).

In essence, under *Brady v. Maryland,* due process is violated when an accused is denied material evidence, which eventually prejudices his determination of guilt or innocence.

The intent of the prosecutor is irrelevant. In *Brady v. Maryland,* this Court stated:

> [S]uppression by the prosecution of evidence favorable to an accused upon request violates due process where the evidence is material whether to guilt or to punishment, *irrespective of the good faith or bad faith of the prosecution.* (Emphasis supplied)

373 U.S. 83, 87, 83 S.Ct. 1194, 1196, 10 L.Ed.2d 215 (1963).

In the instant case, the State destroyed the most critical and damaging piece of evidence against the Petitioner, FARAH.

The Petitioner was arrested as a result of a reverse sting operation. The first time the police met with the Petitioner, FARAH, was on the date of arrest, some three months after the negotiations had commenced. No discussions as to price, amount, or prearranged meetings took place involving the Petitioner, FARAH's presence.

In Count I, the State charged that on July 10, 1984, the Petitioner, FARAH and several co-defendants "did conspire, combine, agree and confederate to possess Cannabis. . . ," and that as a part of this Conspiracy, they "met at the Banana Boat Lounge . . . where money to be used to acquire possession of the Cannabis was displayed." According to the testimony of Detective Tiderington, it was the Petitioner, FARAH, who at the Banana Boat Lounge, showed him a blue bag that contained a large sum of U.S. currency. Further, in the

Defendant's arrest form signed under oath by Detective Scotti, he stated:

> Ronald (referring to Petitioner, Ronald Gregory Farah) walked over to the pick-up truck and showed Tiderington the $56,000. in cash.

The money, however, remained in the trunk of the truck throughout the meetings of July 10, 1984 and until after the arrest of the Defendant, at which time, it was seized by the police. After the Defendant's arrest, he made the following statement:

> Q Did Farah—Mr. Farah make any statements to you after you placed him under arrest?
>
> A Yes. After I advised the Defendants of their rights, I asked each one of them who was the owner of the money. Farah advised me what money. He said, "I don't know about any money you're talking about." He said, "I've never seen any money today."

The Petitioner FARAH, filed a Demand for Discovery pursuant to Fla.R.Crim.P. 3.220 on August 27, 1986, requesting the State to permit him to "inspect, copy, test and photograph . . . any tangible papers or objects which were obtained from or belonging to the Defendant," and a Motion to Preserve Evidence, on August 27, 1986, requesting the State "to preserve and not to destroy or alter any and all evidence (including) . . . money . . . which relate in any manner to this case." (Appendix 8). On September 21, 1986, the trial court

granted the Defendant's Motion to Preserve Evidence and ordered the State "to preserve and retain intact and not to destroy or alter any and all evidence (including) . . . money." (Appendix 3).

Pursuant to Fla.R.Crim.P. 3.220, the State advised that tangible objects taken from or belonging to the Defendant could be inspected, photographed and/or tested. The Defendant, in accordance with Fla.R.Crim.P. 3.220 and the Court's Order of September 21, 1986 mandating the State to preserve and retain intact all evidence, including money, on May 15, 1985 notified the prosecutor of his wish to have the money seized inspected for the purpose of lifting of latent prints and comparing latent to standard fingerprints. However, the Defendant was denied this right as the City of Fort Lauderdale Police Department had deposited the money and made no effort to obtain any fingerprint evidence (latents) on the money, the bag containing the money, or the vehicle in which the money was allegedly transported.

It is unequivocal that the destroyed evidence was favorable to the Defendant. The only link to the alleged conspiracy and trafficking charge was the money the Defendant was accused of bringing to the July 10th meeting. From the inception of his arrest, the Defendant denied ownership or knowledge of these funds. The State stipulated that the Defendant's Motion to Dismiss Information due to the State's failure to preserve evidence was dispositive as to all of the charges in the Information.

In addition, whether evidence establishing the Defendant's fingerprints were on the money he allegedly brought to the meeting lounge went to the heart of his guilt or innocence. Only expert testimony could establish whether the Defendant's fingerprints were on the money he was charged with providing. Undoubtedly, this type of evidence would have affected the outcome of the trial as it would throw a reasonable doubt on his participation in the conspiracy and his involvement in the trafficking offense. The State's action in depositing the money immediately following the seizure deprived the petitioner of the opportunity to document and conclusively establish his innocence. Undoubtedly, expert testimony that the Defendant's fingerprints were *not* on the money would have undermined the outcome of the trial.

A look to the entire record shows that no other co-Defendant gave testimony which adversely affected the Defendant. The State has no confession by either the Defendant, or any of his alleged co-conspirators. Furthermore, although the State represented to the Appellate Court that the Defendant's recorded statements to undercover police evidenced he was part of a crime ring and had been trafficking in drugs, no such recording was ever made a part of the record. In essence, this statement was merely an assertion made by trial counsel in a motion based on information and belief of an unidentified source, not made part of the record.

Even the sentence in this case illustrates the questionable validity of the Defendant's guilt. The Defendant was sentenced to time served as to Count I

(a total of four days in prison), and to three years as to Count II.

The State's action, whether neglegent or intentional, resulted in denying Defendant, Farah's right to present expert testimony in violation of his Fifth Amendment due process right. The Defendant, FARAH had a right to the means necessary to conduct his defense. He was denied this right when deprived of the opportunity to have an expert of his choosing examine the money he allegedly brought to the meeting to purchase contraband.

In *Barnard v. Henderson,* 514 F.2d 744 (5th Cir. 1975), *Barnard* moved pretrial for permission to inspect the murder weapon and bullet by a ballistics expert of his own choosing and this request was denied. In affirming his conviction, the Louisiana Supreme Court questioned the applicability of *Brady* as Barnard could not conclusively establish that an examination of the murder weapon and bullet would be favorable to him. The Fifth Circuit Court of Appeals entertaining the appeal from Barnard's habeas corpus reversed finding that:

> [F]undamental fairness is violated when a criminal Defendant on trial for his liberty is denied the opportunity to have an expert of his choosing, bound by appropriate safeguards imposed by the Court, examine a piece of critical evidence whose nature is subject to varying expert opinion.

514 F.2d at 746. Furthermore, the Court refused to accept the State's contention that the Defendant could not show the evidence would be favorable emphasizing that "due process cannot be sidestepped by such a facile distinction." *Id.*

Likewise, in the case at bar, the City of Fort Lauderdale Police Department, in its greed to utilize the confiscated funds, comingled the only evidence which could conclusively corroborate the Defendant's statement to the arresting officer—"I don't know about any money you're talking about." "I've never seen any money today," thereby establishing his innocence. Hence, they denied the Defendant due process of law when they obstructed his ability to have the confiscated funds, and the bag in which the funds were contained examined. Had the Defendant been provided access to this evidence as envisioned by Fla.R. Crim.P., the Florida Constitution, the Fifth and Fourteenth Amendments to the United States Constitution, as well as the trial court's order to preserve the evidence dated September 21, 1984, the Defendant could have fairly defended.

WHEREFORE, this Court's supreme review, the final safeguard, is hereby requested.

MILTON M. FERRELL, JR.
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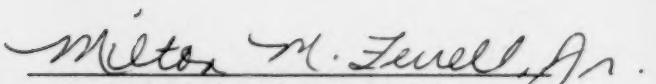

by: MILTON M. FERRELL, JR.

NO.

IN THE SUPREME COURT OF THE
UNITED STATES

October Term, 1987

RONALD GREGORY FARAH

Petitioner,

vs.

STATE OF FLORIDA

Respondent.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that three true and correct copies of the foregoing corrected Petition for Writ of Certiorari were mailed to the Office of the Attorney General, Attention: Ms. Diane Leeds, Assistant Attorney General, 111 Georgia Avenue—Suite 204, West Palm Beach, Florida, 33401 this 23rd day of December, 1987.

MILTON M. FERRELL, JR.
FERRELL, WILLIAMS
Counsel for Petitioner
100 Chopin Plaza
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Telephone: 305-371-8585

Milton M. Ferrell, Jr.

by: MILTON M. FERRELL, JR.

Appendix

IN THE DISTRICT COURT OF APPEAL
OF THE THE STATE OF FLORIDA
FOURTH DISTRICT

NOT FINAL UNTIL TIME EXPIRES TO FILE REHEARING MOTION AND, IF FILED, DISPOSED OF.

JANUARY TERM 1987

CASE NO. 4-86-1024.

RONALD GREGORY FARAH,

Appellant,

v.

STATE OF FLORIDA,

Appellee.

Decision filed July 8, 1987

Appeal from the Circuit Court for Broward County; Lawrence L. Korda, Judge.

Milton M. Ferrell, Jr., Miami, for appellant.

Robert A. Butterworth, Jr., Attorney General, Tallahassee, and Diane Leeds, Assistant Attorney General, West Palm Beach, for appellee.

PER CURIAM.

AFFIRMED.

LETTS, GLICKSTEIN, and GUNTHER, JJ., concur.

[FILED 1984 SEP 24]

IN THE CIRCUIT COURT OF
THE SEVENTEENTH JUDICIAL CIRCUIT
IN AND FOR BROWARD COUNTY, FLORIDA.

CASE NO. 84-7580 CF10A CF A

STATE OF FLORIDA,

Plaintiff,

-vs-

RONALD GREGORY FARAH,

Defendant.

ORDER ON PRE-TRIAL MOTIONS

THIS CAUSE having come on to be heard on Friday, September 14, 1984 at 9:00 o'clock a.m., upon those Motions previously filed by the Defendant, RONALD GREGORY FARAH, and the Court, having examined the Motions and heard argument by counsel for the Plaintiff and the Defendant, and being otherwise fully advised in the premises, it is thereupon,

ORDERED and ADJUDGED as follows:

1. That the Motion to Dismiss Count I of the Information is hereby denied.

2. That the Motion to Strike Unnecessary Allegation as Surplusage is hereby denied.

3. That the Motion to Preserve Evidence is granted in so far as to paragraph #1, and denied as to paragraph #2 thereof, and accordingly, the Plaintiff is ordered to preserve and retain intact and not to destroy or alter any and all evidence, books, papers, documents, photographs, tangible objects, money, contraband, or any other items, including but not limited to any handwritten, rough or draft notes by Broward Sheriff's Office Deputies or other State Agents, or law enforcement personnel, as well as any surveillance logs, tapes, or other material, which are in the actual, constructive or joint possession, custody or control of said agents and which relate in any manner to this case.

4. That the Motion for Production of Favorable Evidence is granted.

5. That the Motion for Notice of the State's Intention to Conduct Scientific Tests and/or Experiments is granted in part and denied in part. Specifically, that the Plaintiff shall give the Defendant notice of the time and place at which any scientific tests and/or experiments shall be made by the Plaintiff of which in the exercise of due diligence, the Plaintiff's attorney shall become aware.

6. That the Motion for Notice by the State of the Intention to Use Evidence Arguably Subject to Suppression is hereby denied.

7. That the Motion to Compel Disclosure of Exculpatory Statements is hereby granted.

8. That the Motion for Notice by the State of the Intention to Rely Upon Other Crimes Evidence is granted in part and denied in part in that the Plaintiff is ordered to notify the Defendant of its intention to rely upon other crimes evidence when in the exercise of due diligence the Plaintiff's attorney becomes aware of any "other crimes" evidence.

9. That the Motion for Statement of Particulars as to Count II of the Information is granted in that the Plaintiff shall furnish within fifteen days of the date of this Order a written statement of the particulars requested in paragraphs #3(a)—The precise date, time and place of the alleged "possession" by the Defendant FARAH; #3(d)—Whether the State intends to prove that the Defendant was the principal with respect to this violation, or that the Defendant merely aided, counseled, commanded, induced, procured or wilfully caused the commission of the alleged violation; #3(e)—The name and address of each unindicted aidor and abettor, and/or principal, if any, of this alleged violation not to include any confidential informer GAS; #3(f)—The exact quantity of cannabis allegedly "possessed" by the Defendant, RONALD FARAH. The remainder of the Motion for Statement of Particulars as to Count II is denied.

10. The Defendant is granted leave to file a Motion for Statement of Particulars as to Count I and shall have five days from the date of this Order within which to serve a copy of said Motion upon the Attorney for the Plaintiff.

DONE and ORDERED this 21 day of September, 1984, at Fort Lauderdale, Broward County, Florida.

[signature illegible]
CIRCUIT JUDGE

(Copies furnished counsel)

[FILED APR 4 1986]

IN THE CIRCUIT COURT OF
THE SEVENTEENTH JUDICIAL CIRCUIT
OF FLORIDA,
IN AND FOR BROWARD COUNTY, FLORIDA.

CASE NO. 84-7580-CF10

STATE OF FLORIDA,
Plaintiff/Appellee,

vs.

RONALD GREGORY FARAH,
Defendant/Appellant.

ORDER DENYING MOTIONS TO DISMISS

THIS CAUSE having come before the Court on defendant's MOTION TO DISMISS BASED ON CONSTITUTIONAL DUE PROCESS VIOLATIONS and defendant's MOTION TO DISMISS INFORMATION, the Court hereby rules as follows:

MOTION TO DISMISS BASED ON CONSTITUTIONAL DUE PROCESS VIOLATIONS, the Court having considered the deposition testimony of Detective Thomas Tiderington and informant Edward Bennett, and the trial testimony of co-defendant Robert Macina, the same having been stipulated into evidence by the parties, and the Court having read the memoranda of law submitted by both parties, and being otherwise fully advised in the premises hereby DENIES defendant's said motion.

As to defendant's MOTION TO DISMISS INFORMATION, said motion being predicated upon the negligent commingling of United States Currency seized by the police, and the Court having considered the evidence stipulated by the parties consisting of Exhibits A-F attached to the defendant's MOTION, and the deposition testimony of Detective Thomas Tiderington, and Sergeant Francis Grady, Sergeant Grady's police report dated July 16, 1984, and the oral proffer of evidence presented to the Court by defense counsel, and having considered the memoranda of law submitted by both parties, and being otherwise fully advised in the premises, the Court hereby DENIES the defendant's MOTION TO DISMISS INFORMATION, and further rules that the State will be permitted to elicit testimony by the police officers concerning the United States currency in question.

DONE and ORDERED this 4th day of April, 1986, at Fort Lauderdale, Broward County, Florida.

[signature illegible]
Circuit Judge

cc: Milton M. Ferrell, Jr., Esquire
Penn D. Farrington, Assistant State Attorney

[FILED SEP 17 1987]

IN THE DISTRICT COURT OF APPEAL OF THE
STATE OF FLORIDA
FOURTH DISTRICT, P.O. BOX A,
WEST PALM BEACH, FL 33402

CASE NO. 4-86-1024.

RONALD GREGORY FARAH,

Appellant,

V.

STATE OF FLORIDA,

Appellee.

September 16, 1987

BY ORDER OF THE COURT:

ORDERED that the Appellant's July 23, 1987, Motion for Rehearing and Suggestion for Rehearing En Banc is hereby denied.

I hereby certify the foregoing is a
true copy of the original court order.

/s/ Clyde L. Heath
CLYDE L. HEATH,
CLERK.

cc: Mily Rodriguez, Esq.
Diane Leeds, Esq.—Attorney General

pab

[FILED 1984 AUG 27]

IN THE CIRCUIT COURT OF
THE 17TH JUDICIAL CIRCUIT
IN AND FOR BROWARD COUNTY, FLORIDA.

CASE NO. 84-007580-CF-10

CRIMINAL DIVISION

STATE OF FLORIDA,

Plaintiff,

-vs-

RONALD GREGORY FARAH,

Defendant.

MOTION TO PRESERVE EVIDENCE

COMES NOW the Defendant, RONALD G. FARAH, by and through his undersigned attorney, and respectfully moves that this Honorable Court enter its Order directing the Plaintiff to preserve evidence as follows:

1. To preserve and retain intact and not to destroy or alter any and all evidence, books, papers, documents, photographs, tangible objects, money, contraband, or any other items, including but not limited to any handwritten, rough or draft notes by Broward Sheriff's Office Deputies or other State Agents, or law enforcement personnel, as well as any surveillance logs, tapes, or other material, which are in the actual, constructive or joint possession, custody or control of said agents and which relate in any manner to this case; and

2. To give Defendant and his counsel:

a. Reasonable notice of the prospective absence or unavailability of any and all witnesses who are known or who by the exercise of due diligence should become known to the prosecution team and who have information, or were so situated that they would reasonably be expected to have information which relates in any manner to this case.

DATED this 24th day of August, 1984, at Miami, Dade County, Florida.

Respectfully submitted,

FERRELL & FERRELL
Attorneys for the Defendant
169 East Flagler Street
Suite 606
Miami, Florida 33131

BY: /s/ Milton M. Ferrell, Jr.
MILTON M. FERRELL, JR.

I HEREBY CERTIFY that a copy of the foregoing was mailed this 24th day of August, 1984, to: Mr. John Countryman, Assistant State Attorney, Room 640, Broward County Courthouse, Fort Lauderdale, Florida.

/s/ Milton M. Ferrell, Jr.
BY: MILTON M. FERRELL, JR.

[FILED 1985 JUN 13]

IN THE CIRCUIT COURT OF
THE 17TH JUDICIAL CIRCUIT
IN AND FOR BROWARD COUNTY, FLORIDA.

CASE NO. 84-7580 CF-A
Bar #198935

STATE OF FLORIDA,

Plaintiff,

-vs-

RONALD G. FARAH,

Defendant.

MOTION TO DISMISS INFORMATION

COMES NOW the Defendant, RONALD G. FARAH, by and through his undersigned attorney, and respectfully moves this Honorable Court to dismiss the Information herein, and as grounds therefor would state as follows:

1. That at the time of the Defendant's arrest on July 10, 1984, approximately $48,000.00 in U.S. Currency and approximately 300 pounds of marijuana was allegedly seized by Officers of the City of Fort Lauderdale Police Department.

2. That the Defendant was charged by Information in Count I, with conspiring with at least five other named Co-Defendants to possess a quantity of cannabis; and in Count II of the Information, with the possession of a quantity of cannabis, the Information having been

filed on July 23, 1984. (See Defendant's Exhibit "A", attached hereto and made a part hereof).

3. That Count I of the Information further alleges that the Defendant, along with other named Co-Defendants allegedly met at the Banana Boat Lounge, located at 2650 State Road 84, Fort Lauderdale, Florida, "where money to be used to acquire possession of the Cannabis was displayed."

4. That the Defendant is alleged never to have had possession of any marijuana, but only of having possession of the money which was seized as hereinabove stated. (See Detective Thomas Tiderington's Deposition of April 4, 1985, pp. 6-11); and Defendant's Arrest Form, submitted as Defendant's Exhibit "B", attached hereto and made a part hereof).

5. That at the time of Defendant's arrest, he made the following statements:

Q Did Farah—Mr. Farah make any statements to you after you placed him under arrest?

A Yes. After I advised the Defendants of their rights, I asked each one of them who was the owner of the money. Farah advised me what money. He said, "I don't know about any money that you're talking about." He said, "I've never seen any money today."

(See Detective Thomas Tiderington's Deposition, pp.11-12)

6. That on August 24, 1984, the Defendant filed his Motion to Preserve Evidence requesting the Court to enter its Order directing the State to preserve and retain intact and not to destroy or alter "any and all evidence, (including) . . . money, which are in the actual, constructive or joint possession, custody or control of the Plaintiff, and which relate in any manner to this case." (See Defendant's Exhibit "C", attached hereto and made a part hereof.)

7. That on September 21, 1984, this Honorable Court entered its Order on Pre-Trial Motions, granting the Defendant's Motion to Preserve Evidence, and thereby ordering the State "to preserve and retain intact and not to destroy or alter any and all evidence (including) . . . money . . . which are in the actual, constructive or joint possession, custody or control" of the State. (See Defendant's Exhibit "D", attached hereto and made a part hereof.)

8. That on May 15, 1985, the Defendant, through his undersigned attorney, notified Mr. John Countryman, the Assistant State Attorney assigned to the prosecution of this case, of his intention to have a qualified expert examine the money seized as hereinbove stated for the purpose of lifting latent fingerprints as well as to compare latent to standard fingerprints, and further advising him of the availability of the expert to examine the money any time from May 27, 1985 through June 7, 1985. (See Defendant's Exhibit "E", attached hereto and made a part hereof.)

9. That on May 16, 1985, counsel for the Defendant again wrote to Mr. John Countryman, Assistant State

Attorney, confirming his previous letter of May 15, 1985, and enclosing a Curriculum Vitae of the expert the Defendant intended to use to examine the money seized in above case. (See Defendant's Exhibit "F", attached hereto and made a part hereof.)

10. That on the 31st day of May 1985, Mr. John Countryman, Assistant State Attorney, first advised the Defendant, through his undersigned counsel, that the "money" had not been preserved, and in fact had been deposited in a bank, thereby precluding the Defendant from having a qualified expert of his choice examine the same in order to assist him in the preparation of his defense to the above referred charges contained in the Information.

11. That due to the failure of the State to preserve the money, as previously ordered by the Court, the Defendant has been deprived of the full protection of Florida Rule of Criminal Procedure 3.220 and of his rights to confrontation and due process as guaranteed him by the Constitution of the State of Florida and the Constitution of the United States of America.

12. That by failing to preserve the money, the Defendant has been precluded from performing independent tests, the results of which would have demonstrated the Defendant's innocence to the charges herein.

13. That the Defendant has been irreparably harmed and prejudiced by the State's non-compliance as aforesaid, thereby warranting the dismissal of the Information filed against him.

WHEREFORE, the Defendant, RONALD G. FARAH, respectfully moves this Honorable Court, to dismiss the Information herein.

Respectfully submitted,

/s/ Milton M. Ferrell, Jr.

MILTON M. FERRELL, JR.
Attorney for the Defendant
66 West Flagler Street
Suite 700, Concord Building
Miami, Florida 33130
Telephone: 305-371-8585

I HEREBY CERTIFY that a copy of the foregoing was mailed this 11th day of June, 1985, to: Mr. John Countryman, Assistant State Attorney, 640 Broward County Courthouse, 201 S. E. Sixth Street, Fort Lauderdale, Florida, 33301.

/s/ Milton M. Ferrell, Jr.

MILTON M. FERRELL, JR.

[FILED 1985 JUN 13]

IN THE CIRCUIT COURT OF
THE 17TH JUDICIAL CIRCUIT
IN AND FOR BROWARD COUNTY, FLORIDA.

CASE NO. 84-7580-CF-D

STATE OF FLORIDA,

Plaintiff,

-vs-

RONALD G. FARAH,

Defendant.

LIST OF EXHIBITS ATTACHED IN SUPPORT OF DEFENDANT'S MOTION TO DISMISS INFORMATION

	EXHIBIT:	PAGES:
INFORMATION FILED IN CASE NO. 84-7580-CF ON JULY 23, 1984	"A"	1-2
ARREST FORM, SIGNED BY DETECTIVE AL SCOTTI, AND DATED JULY 10, 1984	"B"	3-4
DEFENDANT'S MOTION TO PRESERVE EVIDENCE FILED AUGUST 24, 1984 ..	"C"	5-6

	EXHIBIT:	PAGES:
ORDER ON PRE-TRIAL MOTIONS DATED SEPTEMBER 21, 1984	"D"	7-9
LETTER DATED MAY 15, 1985, ADDRESSED TO MR. JOHN COUNTRYMAN, ASSISTANT STATE ATTORNEY	"E"	10-11
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EXHIBIT A

[FILED JUL 23 1984]

IN THE CIRCUIT COURT OF
THE SEVENTEENTH JUDICIAL CIRCUIT
IN AND FOR BROWARD COUNTY, FLORIDA

Case No. 84-7580 CFA

THE STATE OF FLORIDA

vs.

NICHOLA ALBERT BOBNES
JOHN RICHARD BLOOME
ROBERT FRANCIS MACINA
RONALD GREGORY FARAH
ROBERT CORTES

INFORMATION FOR

I. CONSPIRACY TO TRAFFIC IN CANNABIS

II. TRAFFICKING IN CANNABIS

III. & IV. POSSESSION OF FIREARM DURING COMMISSION OF FELONY

V. & VI. CARRYING A CONCEALED FIREARM

IN THE NAME AND BY THE AUTHORITY OF THE STATE OF FLORIDA:

MICHAEL J. SATZ of the Seventeenth Judicial Circuit of Florida, as Prosecuting Attorney for the State of Florida in the County of Broward, by and through his undersigned Assistant State Attorney, charges that

NICHOLAS ALBERT BOBNES, JOHN RICHARD BLOOME, ROBERT FRANCIS MACINA, RONALD GREGORY FARAH and ROBERT CORTES

from the 9th day of July A.D. 1984 up to and including the 10th day of July, A.D. 1984, in the County and State aforesaid.
did then and there conspire, combine, agree, or confederate with one another to commit a criminal offense, to-wit: Trafficking in Cannabis, a controlled substance, in that the said Nicholas Albert Bobnes, John Richard Bloome, Robert Francis Macina, Ronald Gregory Farah and Robert Cortes did conspire, combine agree or confederate to possess Cannabis in an amount of two thousand (2,000) pounds or more, but less than ten thousand (10,000) pounds, and as a part this Conspiracy on July 10, 1984, Nicholas Albert Bobnes, John Richard Bloome, Robert Francis Macina, Ronald Gregory Farah and Robert Cortes jointly or severally met at the Banana Boat Lounge, located at 2650 State Road 84, Fort Lauderdale, Florida, where money to be used to acquire possession of the Cannabis was displayed, contrary to F.S. 893.135(4), F.S. 893.135(1)(a)(2), and F.S. 893.03(1)(c)3,

COUNT II

AND MICHAEL J. SATZ, State Attorney of the Seventeenth Judicial Circuit of Florida, as Prosecuting Attorney for the State of Florida in the County of Broward, by and through his undersigned Assistant State Attorney, charges that NICHOLAS ALBERT BOBNES, JOHN RICHARD BLOOME, ROBERT FRANCIS MACINA, RONALD GREGORY FARAH

and ROBERT CORTES on the 10th day of July, A.D. 1984 in the County and State aforesaid, did then and there unlawfully and knowingly have in their actual or constructive possession, a controlled substance, to-wit: Cannabis, in an amount in excess of one hundred (100) pounds, but less than two thousand (2,000) pounds, and in the course thereof Nicholas Albert Bobnes and Robert Cortes did carry, display, use, threaten or attempt to use a firearm, contrary to F.S. 893.135(1)(a)(1) and F.S. 893.03(a)(c)3 and F.S. 893.13(1)(a)(2), and F.S. 775.087(1),

COUNT III

AND MICHAEL J. SATZ, State Attorney of the Seventeenth Judicial Circuit of Florida, as Prosecuting Attorney for the State of Florida in the County of Broward, by and through his undersigned Assistant State Attorney, charges that ROBERT CORTES on the 10th day of July A.D. 1984, in the County and State aforesaid, did then and there unlawfully display, use, threaten to use, or attempt to use a firearm or carry a concealed firearm, to-wit: a handgun, while committing or attempting to commit a felony, to-wit: Trafficking in Cannabis, contrary to F.S. 790.07(1)(2) and F.S. 893.135(1)(a)(1), F.S. 893.03(1)(c) and F.S. 893.13(1)(a)(2),

COUNT IV

AND MICHAEL J. SATZ, State Attorney of the Seventeenth Judicial Circuit of Florida, as Prosecuting Attorney for the State of Florida in the County of Broward, by and through his undersigned Assistant State Attorney, charges that NICHOLAS ALBERT

BOBNES on the 10th day of July A.D. 1984, in the County and State aforesaid, did then and there unlawfully display, use, threaten to use, or attempt to use a firearm or carry a concealed firearm, to-wit: a handgun, while committing or attempting to commit a felony, to-wit: Trafficking in Cannabis, contrary to F.S. 790.07(1)(2) and F.S. 893.135(1)(a)(1), F.S. 893.03(1)(c) and F.S. 893.13(1)(a)(2),

COUNT V

AND MICHAEL J. SATZ, State Attorney of the Seventeenth Judicial Circuit of Florida, as Prosecuting Attorney for the State of Florida in the County of Broward, by and through his undersigned Assistant State Attorney, charges that NICHOLAS ALBERT BOBNES on the 10th day of July A.D. 1984, in the County and State aforesaid, did then and there unlawfully, and knowingly, carry on or about his person a concealed firearm, to-wit: a handgun, contrary to F.S. 790.01(2),

COUNT VI

AND MICHAEL J. SATZ, State Attorney of the Seventeenth Judicial Circuit of Florida, as Prosecuting Attorney for the State of Florida in the County of Broward, by and through his undersigned Assistant State Attorney, charges that ROBERT CORTES on the 10th day of July A.D. 1984, in the County and State aforesaid, did then and there unlawfully, and knowingly, carry on or about his person a concealed firearm, to-wit: a handgun, contrary to F.S. 790.01(2),

* * *

EXHIBIT B

COMPLAINT AFFIDAVIT

FILING AGENCY FLP.D.

OFFENSE REPORT 84-94122

DEFENDANTS LAST NAME Farah
FIRST Ronald MIDDLE Gregory

SEX M HGT 5'10 WGT 220 EYES Brn
HAIR Blk COMP Med AGE 26
DOB 4-27-58 BIRTH PLACE Ohio

PERMANENT ADDRESS 446 E Liberty St Girand Ohio LOCAL ADDRESS 3037 NW 48 Ave Coconut Creek

HOW LONG DEFENDANT IN BROWARD COUNTY 1 year PLACE OF ARREST 2075 St. Rd. 84

DATE ARRESTED 7-10-84
TIME ARREST 8:15pm
ARRESTING OFFICERS Tiderington/Scotti

COUNT NO. 1 OFFENSES CHARGED
Trafficking in marij. (over 100 pounds) FEL
F.S. NO. OR CAPIAS/WARRANT NO. 893 135

COUNT NO. 2 OFFENSES CHARGED Consp. to traffic marij. (over 2000 pounds) FeL
F.S. NO. OR CAPIAS/WARRANT NO. 893 135

PROBABLE CAUSE AFFIDAVIT

Before me this date personally appeared Tiderington Thomas J. who being first duly sworn deposes and says that on the 10 day of July 1984 at 2075 St. Rd. 84 the above named defendant committed the above offenses charged and the facts showing probable cause to believe same are as follows:

On July 10th 1984, Det. Scotti and Tiderington, both wearing body transmitters, with the Defendant, Ronald Farah at the Banana Boat Lounge, located just West of I-95 on St Rd 84 at approx. 6:00 p.m. All defendants were sitting inside. Scotti and Tiderington waited outside with the defendant, Ronald Farah and Ronald advised that they had approx. $56,000.00 now for the 300 lbs. and we would have to wait for the rest of the money. Ronald advised that he wanted the full 4,000 lbs. of pot, but he wanted to do the 300 lbs. first. Ronald walked over to the pick-up truck and showed Tiderington the $56,000.00 in cash. Ronald stated that the rest of the money would be up here soon. All conversations were taped. Scotti and Tiderington then drove to the Howard Johnsons located at I-95 and St Rd 84, while the 5 defendants followed us in their 3 vehicles. We went into the rest and negotiated the marijuana sting. Farah advised that he would have to drive back to the Banana Boat Lounge to get his friend with the rest of the money. He left and returned a short time later and advised that it would be late before he got the rest of the money. Scotti was given keys to the black Chevy and went to Police Dept. Marijuana shed where Scotti, Det. Vanchoff and Det. Robitaille helped load the trunk of the Chevy with 4 bales of marijuana

(291 lbs.) Scotti drove the car back to the motel at which time Scotti gave the keys to the car to Cortes. Cortes checked the pot, appeared to be satisfied, and drove away with the rest of the pot. The arrest took place, and Scotti walked back into the Rest. The arrest took place with the Co-defendants.

Vattex was conducted. Positive for marijuana.

Sworn and subscribed before me, the [illegible] authority, this 10 day of July 1984 /s/ Stephen E Medley TITLE Det, FLPD CLERK OF THE COURT OR NOTARY PUBLIC OR ASST ST ATTY

I swear the above statement is correct and true to the best of my knowledge and belief /s/ Det AJ Scotti OFFICERS AFFIANTS SIGNATURE CCN

SEVENTEENTH JUDICIAL CIRCUIT
BROWARD COUNTY
STATE OF FLORIDA
[illegible]

FIRST APPEARANCE ARREST FORM
COURT COPY

Orig Court
2nd State Att.
3rd Filing Agency
4th Arresting Agent

EXHIBIT C

IN THE CIRCUIT COURT OF
THE 17TH JUDICIAL CIRCUIT IN AND FOR
BROWARD COUNTY, FLORIDA.

CASE NO. 84-007580-CF-10

CRIMINAL DIVISION

STATE OF FLORIDA,

Plaintiff,

-vs-

RONALD GREGORY FARAH,

Defendant.

MOTION TO PRESERVE EVIDENCE

COMES NOW the Defendant, RONALD G. FARAH, by and through his undersigned attorney, and respectfully moves that this Honorable Court enter its Order directing the Plaintiff to preserve evidence as follows:

1. To preserve and retain intact and not to destroy or alter any and all evidence, books, papers, documents, photographs, tangible objects, money, contraband, or any other items, including but not limited to any handwritten, rough or draft notes by Broward Sheriff's Office Deputies or other State Agents, or law

enforcement personnel, as well as any surveillance logs, tapes, or other material, which are in the actual, constructive or joint possession, custody or control of said agents and which relate in any manner to this case; and

2. To give Defendant and his counsel:

a. Reasonable notice of the prospective absence or unavailability of any and all witnesses who are known or who by the exercise of due diligence should become known to the prosecution team and who have information, or were so situated that they would reasonably be expected to have information which relates in any manner to this case.

DATED this 24th day of August, 1984, at Miami, Dade County, Florida.

Respectfully submitted,

FERRELL & FERRELL
Attorneys for the Defendant
169 East Flagler Street
Suite 606
Miami, Florida 33131
BY: /s/ Milton M. Ferrell, Jr.
MILTON M. FERRELL, JR.

I HEREBY CERTIFY that a copy of the foregoing was mailed this 24th day of August, 1984, to: Mr. John Countryman, Assistant State Attorney, Room 640, Broward County Courthouse, Fort Lauderdale, Florida.

/s/ Milton M. Ferrell, Jr.
BY: MILTON M. FERRELL, JR.

EXHIBIT D

IN THE CIRCUIT COURT OF
THE SEVENTEENTH JUDICIAL CIRCUIT
IN AND FOR BROWARD COUNTY, FLORIDA

CASE NO. 84-9580 CF A

STATE OF FLORIDA,

Plaintiff,

-vs-

RONALD GREGORY FARAH,

Defendant.

ORDER ON PRE-TRIAL MOTIONS

THIS CAUSE having come on to be heard on Friday, September 14, 1984 at 9:00 o'clock a.m., upon those Motions previously filed by the Defendant, RONALD GREGORY FARAH, and the Court, having examined the Motions and heard argument by counsel for the Plaintiff and the Defendant, and being otherwise fully advised in the premises, it is thereupon,

ORDERED and ADJUDGED as follows:

1. That the Motion to Dismiss Count I of the Information is hereby denied.

2. That the Motion to Strike Unnecessary Allegation as Surplusage is hereby denied.

3. That the Motion to Preserve Evidence is granted in so far as to paragraph #1, and denied as to paragraph #2 thereof, and accordingly, the Plaintiff is ordered to preserve and retain intact and not to destroy or alter any and all evidence, books, papers, documents, photographs, tangible objects, money, contraband, or any other items, including but not limited to any handwritten, rough or draft notes by Broward Sheriff's Office Deputies or other State Agents, or law enforcement personnel, as well as any surveillance logs, tapes, or other material, which are in the actual, constructive or joint possession, custody or control of said agents and which relate in any manner to this case.

4. That the Motion for Production of Favorable Evidence is granted.

5. That the Motion for Notice of the State's Intention to Conduct Scientific Tests and/or Experiments is granted in part and denied in part. Specifically, that the Plaintiff shall give the Defendant notice of the time and place at which any scientific tests and/or experiments shall be made by the Plaintiff of which is the exercise of due diligence, the Plaintiff's attorney shall become aware.

6. That the Motion for Notice by the State of the Intention to Use Evidence Arguably Subject to Suppression is hereby denied.

7. That the Motion to Compel Disclosure of Exculpatory Statements is hereby granted.

8. That the Motion for Notice by the State of the Intention to Rely Upon Other Crimes Evidence is granted in part and denied in part in that the Plaintiff is ordered to notify the Defendant of its intention to rely upon other crimes evidence when in the exercise of due diligence the Plaintiff's attorney becomes aware of any "other crimes" evidence.

9. That the Motion for Statement of Particulars as to Count II of the Information is granted in that the Plaintiff shall furnish within fifteen days of the date of this Order a written statement of the particulars requested in paragraphs #3(a)—The precise date, time and place of the alleged "possession" by the Defendant FARAH; #3(d)—Whether the State intends to prove that the Defendant was the principal with respect to this violation, or that the Defendant merely aided, counseled, commanded, induced, procured or wilfully caused the commission of the alleged violation; #3(e)—The name and address of each unindicted aidor and abettor, and/or principal, if any, of this alleged violation; not to include any Confidential Informer. GAS. #3(f)—The exact quantity of cannabis allegedly "possessed" by the Defendant, RONALD FARAH. The remainder of the Motion for Statement of Particulars as to Count II is denied.

10. The Defendant is granted leave to file a Motion for Statement of Particulars as to Count I and shall have five days from the date of this Order within which to serve a copy of said Motion upon the Attorney for the Plaintiff.

DONE and ORDERED this 21st day of September, 1984, at Fort Lauderdale, Broward County, Florida.

GEORGE A. SHAHOOD
CIRCUIT JUDGE

(Copies furnished counsel)

A TRUE COPY

EXHIBIT E

MILTON M. FERRELL, JR.
ATTORNEY AT LAW
700 CONCORD BUILDING
66 WEST FLAGLER STREET
MIAMI, FLORIDA 33130

WALTER E. GWINN
OF COUNSEL

TELEPHONE 37 -8585
AREA CODE 305

May 15, 1985

Mr. John Countryman
Assistant State Attorney
640 Broward County Courthouse
201 S. E. Sixth Street
Fort Lauderdale, Florida, 33301

re: State v. Ronald Farah
Case No. 84-7580-CF

Dear Mr. Countryman:

I have made arrangements with Hart Questioned Document Laboratory for a qualified expert in the lifting of latent fingerprints, as well as the comparison of latent to standard fingerprints to examine the money seized in the above case.

As you know, Judge Shahood has previously entered an Order on September 21, 1984 requiring the money to be retained so that at the appropriate time it will be available for qualified defense experts. I have made

arrangements for the expert to be available at any time which is convenient for the arresting agency, commencing Monday, May 27, 1985 through Friday, June 7, 1985. I will of course immediately notify you of the expert's conclusions and make him available to you for deposition prior to trial, which is currently scheduled for June 10, 1985.

To my mind, the result of the expert's examination may well be dispositive of the case, as my client is alleged never to have had possession of any marijuana, but only of having possession of money that was subsequently seized, an allegation which he vehemently has denied by the entry of his not guilty plea, and at the time of his arrest, when he stated to Detective Tiderington, "I don't know about any money that you're talking about." "I've never seen any money today." (See Tiderington's Deposition of April 4, 1985, page 12).

I would appreciate your letting me know when will be a convenient time for the expert to examine the money and to tell me at what location the money will be made available to him.

Within the next few days, I will send you a Curriculum Vitae of the specific expert whom Hart Questioned Document Laboratory will assign to this matter.

I trust you are well, and with kindest regards, I am

Sincerely,

/s/ Milton M. Ferrell, Jr.

MILTON M. FERRELL, JR.

MMF, JR./mc

cc: Clerk, Circuit Court

EXHIBIT F

MILTON M. FERRELL, JR.
ATTORNEY AT LAW
700 CONCORD BUILDING
66 WEST FLAGLER STREET
MIAMI, FLORIDA 33130

WALTER E. GWINN
OF COUNSEL

TELEPHONE 37 -8585
AREA CODE 305

May 16, 1985

Mr. John Countryman
Assistant State Attorney
640 Broward County Courthouse
201 S. E. Sixth Street
Fort Lauderdale, Florida, 33301

re: State v. Ronald Farah
Case No. 84-7580-CF

Dear Mr. Countryman:

I confirm my letter to you of May 15, 1985, and in accordance with same, I am enclosing Curriculum Vitae of expert the Defendant will use to examine the money seized in above case.

I trust you are well, and with kindest regard, I am

Sincerely,

/s/ Milton M. Ferrell, Jr.
MILTON M. FERRELL, JR.

MMF, JR./mc

Enclosure

Joseph J. Musial
Consultant Criminalist
1920 S.W. 33rd Avenue
Miami, Florida 33145
(305) 448-6373

5-15-85

Milton J. Ferrell, Attorney
7th. Floor Concord Building
66 West Flagler Street
Miami, Florida 33130

Re; State of Fla. Vs. Ron Farah

Dear Mr. Ferrell;

This will confirm that my services will be available for the examination and processing of U.S. currency May 27th, 1985 through June 6th, 1985.

Sincerely

/s/ Joseph J. Musial

CERTIFIED LATENT PRINT EXAMINER
SPECIALITIES: FINGERPRINTS, BALLISTICS,
TOOL MARKS, MOULAGE CASTINGS,
CRIME SCENE RECONSTRUCTION, ETC.

JOSEPH J. MUSIAL
(Consultant Criminalist)
1920 S. W. 33rd Avenue
Miami, Florida 33145
Phone: (305) 448-6373

EMPLOYMENT:

City of Miami Police Department
March 1947 to July 1975. (Retired with 32 years service credit.)
Title: *Supervisor of Identification.*
Responsibilities: Supervision of all identification functions which included: Fingerprinting of persons arrested by the City of Miami P.D., fingerprinting of applicants for employment and coordinating the exchange of information with other agencies, i.e., county, state, federal, etc., supervision of crime lab activities, photo lab, crime scene search for physical evidence, crime scene photography; preparation of physical evidence for court presentation; training of police technical personnel; instructing of police recruits in identification matters.

Prior to establishment of The Dade County Crime Laboratory—was responsible for all forensic ballistics cases for the City of Miami and several other local municipalities, including Dade County.

Since retirement, I have been retained internationally by Federal, State, and County agencies, as well as numerous private attorneys as a consultant concerning physical evidence.

EXPERIENCE:

Assistant State Attorneys—conducted in-service training classes on how to cross-examine the technical witness.

Miami Dade Community College—North and South Campus. Conducted classes in Police Science.

The Southern Police Institute—University of Louisville, Kentucky—lectured on identification matters.

Criminal Justice Institute—Police Academy—conducted police science classes.

ACHIEVEMENTS:

1966—Established the first video identification system for law enforcement.

1961—Established court precedence in the use of visual aids for presenting firearms evidence to a jury in order to enable them to understand the inner mechanism of a firearm. (State vs. Robinson, 1951)

Presented the first ever video taped confession in a First Degree Murder Case.

SPECIAL TRAINING & CERTIFICATION:

Certified as a Latent Fingerprint Examiner by the International Association for Identification.

Attended numerous training seminars, including the Advanced Administrative Latent Fingerprint School at the F.B.I. Academy, Quantico, Virginia.

HONORS:

Have received several citations and commendations from the City of Miami, Dade County and the Federal Bureau of Investigation for outstanding work in the Police Science field. Developed the primary physical evidence which resulted in the successful solution of crimes under investigation.

Qualified as an expert in courts of all levels, i.e., municipal, county, state and federal, on various types of physical evidence, such as fingerprints, ballistics, tool marks, moulage castings, crime scene reconstruction, photography, etc.

Have received Police Science Awards from the International Association of Chiefs of Police and the International Association for Identification.

Past President of the International Association for Identification; served as Chairman of the Board of Directors. For a period of three years, Fellow of the Fingerprint Society (Great Britain).

Have prepared articles for publication on request for the following:
"The F.B.I. Monthly Bulletin"
"The State Trial Judges Journal"
"The I.A.I. Newsletter"

[FILED 1985 JUN 13]

IN THE CIRCUIT COURT OF THE
17TH JUDICIAL CIRCUIT IN AND
FOR BROWARD COUNTY, FLORIDA.

CASE NO. 84-7580-CF-A
Bar #198935

STATE OF FLORIDA,

Plaintiff,

-vs-

RONALD G. FARAH,

Defendant.

**MEMORANDUM OF LAW
IN SUPPORT OF DEFENDANT'S
MOTION TO DISMISS**

The information in the case at bar charges in Count I thereof that the Defendant conspired to traffick in cannabis. The Information goes on to state that at the time of the his arrest on July 10, 1984, the Defendant, as part of said conspiracy, met with other alleged co-conspirators at the Banana Boat Lounge, *where money to be used to acquire possession of the Cannabis was displayed.* However, the Defendant is never alleged to have had possession of the marijuana, but only of having possession of the money (by displaying same, as above stated), which was seized at the time of the Defendant's arrest. (See Detective Thomas Tiderington's Deposition of April 4, 1985, pp. 6-11).

Further, in the Defendant's Arrest Form signed and sworn to by Detective Scotti, Detective Scotti stated:

> Ronald (referring to Defendant, Ronald Farah) walked over to the pick-up truck and showed Tiderington the $56,000. in cash.

(See Defendant's Arrest Form, Page 1, attached to the Defendant's Motion to Dismiss as Exhibit "B")

In short, the State has alleged that Defendant Farah had the money in his hand. The Defendant, however, has vehemently denied he ever saw such money, much less touched it. (See Detective Tiderington's Deposition, pp. 11-12)

Rule 3.220 of the Florida Rules of Criminal Procedure clearly sets forth the obligations of the prosecutor to protect and preserve all evidence and to allow the Defendant to inspect such evidence upon timely request. These guidelines were drawn up in order to promote and allow an expeditious and fair determination of the charges, and to permit sufficient discovery by the accused to make an informed plea and prepare for trial. (See Committee Notes to Florida Rules of Criminal Procedure).

The State has failed to comply with the provisions of Rule 3.220 of the Florida Rules of Criminal Procedure by failing to preserve the money seized at the time of the Defendant's arrest. This action on the part of the State is nonetheless intentional, as the State well knew of the importance of this evidence as a result of its

investigation in this cause, especially as far as the Defendant, Ronald Farah is concerned.

The Defendant respectfully submits that the State's failure to preserve the money seized as material evidence under the circumstances described herein is in further violation of this Honorable Court's Order of July 10, 1984, directing the State to "preserve and retain . . . and not to destroy or alter . . . any and all evidence . . . (including) money." (See Defendant's Exhibit "D"). This flagrant violation by the State of the Defendant's rights by its failure to preserve exculpatory evidence, which is relevant and material for the Defendant to prepare his defense, not only limits the Defendant's rights to effective counsel and his right to Confrontation under the Sixth Amendment to the United States Constitution, but infringes upon his Due Process rights under the Fifth Amendment, and the Due Process Clause of the Fourteenth Amendment. *United States v. Agurs,* 427 U.S. 97 (1976); *Brady v. Maryland,* 373 S. 83 (1963); *State v. Johnson,* 380 So.2d 673 (Fla. 1973).

Courts throughout Florida have also acknowledged these fundamental rights of an accused. The case of *State v. Johnson,* 280 So.2d 673 (Fla. 1980), a leading decision of the Supreme Court of Florida concerning these issues, involved a situation wherein the Defendant, *"during the discovery period* prior to the second trial . . . filed a motion to examine any physical evidence relative to the gun with which the State charged the Defendant was armed at the time of the crime." (Emphasis added) *Id.* at 673. The Court, went on to state the following key facts from the case:

> [I]t thereafter appeared that the fatal bullet had been lost, after examination by the police ballistic expert, *sometime after respondent had entered his initial guilty plea, but before the first trial.* Defendant had not been previously apprised of this loss because the prosecution had not sought to introduce testimony by the ballistics expert at the trial. (Emphasis added)
>
> Respondent moved to suppress the testimony of the ballistics expert at the second trial arguing that the inability of the defense to conduct an independent examination of the bullet denied him his right of confrontation.

Id. at 673-674.

In reversing the Defendant's conviction, the District Court of Appeal, Third District in *Johnson v. State,* 249 So.2d 470 (Fla. 3 DCA 1971) held:

> [W]e think that appellant's right to examine tangible evidence is a part of his right to the confrontation of witnesses against him and the right to a full and complete cross-examination of the witnesses who are to be presented against him.
>
> Florida Rule of Criminal Procedure 1.220(b) is a recognition of an important procedural right and the State may not by the simple statement that they have "lost the physical evidence" prevent the exercise of the right and then use

> the "lost evidence" against the Defendant. We therefore conclude that the court committed reversible error when it denied defendant's motion to suppress the ballistics expert's testimony.

Id. at 674. This decision was approved and adopted by the Supreme Court of Florida in discharging certiorari by the State. *State v. Johnson,* 280 So.2d 673, 674. *Id.*

Like the Defendant in *State v. Johnson, Id.,* the Defendant in the instant cause filed his Motion to Preserve Evidence *during the discovery period,* along with his Demand for Discovery, on August 24, 1984, shortly after the filing of the Information herein and of his arraignment on August 9, 1984, in accordance with the Florida Rules of Criminal Procedure. (See Defendant's Exhibit "C")

Reversal of convictions have been mandated even in cases wherein, like in the instant case, the State failed to preserve evidence of exculpatory nature or necessary to the preparation of his defense, and destroyed such evidence as early as prior to the Defendant's arrest for the offenses charged or shortly thereafter, before the Defendant's invoking discovery under the Florida Rules of Criminal Procedure.

In *State v. Counce,* 392 So.2d 1029 (Fla. 4th DCA 1981), the police retrieved, during the course of an investigation of the cause, "a quart-sized beer bottle containing a liquid that smelled and tasted like gasoline; and (2) a charred piece of brown paper." *Id.* at 1030. These were stored in a squadroom at the police station. Later on, the station commander directed that

said evidence be destroyed, *before* any analysis could be made. Several days later, the Defendant was taken into custody and charged with attempted arson and extortion. All of the offenses charged were allegedly committed on February 13, 1979, *the date the evidence was destroyed by the police.* Prior to trial the Defendant moved to dismiss said charges on the ground that the destruction of said evidence had denied him due process of law. The Fourth District Court of Appeal, in affirming the trial Court's Order dismissing the charges, stated:

> [T]he destruction of the material was thus an action of the State; *that action impaired Counce's right of access to relevant and material evidence necessary to Counce's preparation of his defense on Count I.* The circuit court properly concluded that this impairment of Counce's right to prepare his defense violated Counce's right to due process.
>
> We conclude that under the circumstances of this case, dismissal of Count I was proper. We hold that the Order of October 8, 1979, was correct and affirm it. (Emphasis added)

Id. at 1030.

The holding in *State v. Counce, Id.* is most consistent with the purpose of the safeguard of due process that a duty of preservation attaches in some form once the State has *first* gathered and taken possession of any discoverable matter. *See, Budman v. State,* 362 So.2d 1022 (Fla. 3rd DCA 1978).

In *Budman, Id.*, the Court pointed out that this duty of the State to preserve discoverable evidence is particularly significant in light of the fact that "[o]therwise, disclosure might be avoided by destroying vital matter before a defendant learns of its existence." *Id.* at 1026. The Court added: "We feel strongly that the duty of disclosure is operative as a duty of preservation; only then, may meaningful discovery be possible later." *Id.* at 1026.

Lost or misplaced evidence is even more prejudicial in cases such as the case at bar, where the evidence in question is the main or only factor linking the Defendant to the charged offense.

In *Colon v. Florida,* 453 So.2d 880 (3rd DCA 1984), a conviction of the Defendant was reversed based on negligent loss of seized drug by police which deprived the defendant of an opportunity to chemically analyze the drug. The Court held: *"Inasmuch as the suspect drug forms the entire basis for the charge of unlawful possession . . .*, the negligent loss of the suspect drug required the trial court to dismiss this charge against the Defendant upon proper motion. *Id.* at 880. (Emphasis added)

The Defendant herein is charged with the possession of the money seized at the time of his arrest, and the testimony of the arresting officer, as stated hereinabove, reveals that the "money" is the one piece of damaging evidence connecting the Defendant to the conspiracy alleged in the Information. Even if the State were to stipulate that Defendant's fingerprints were not on the allegedly seized money, the Defendant herein would still

be precluded from having his own expert examine the evidence. The question, therefore, is not only one of of discovery, but rather the defendant's right to the means necessary to conduct his defense. The United States Circuit Court of Appeals for the Fifth Circuit, in agreeing with this statement, has added:

> Fundamental fairness is violated when a criminal defendant on trial for his liberty is denied the opportunity to have an expert of his choosing, bound by appropriate safeguards imposed by the Court, examine a piece of critical evidence whose nature is subject to varying expert opinion.

Barnard v. Henderson, 514 F.2d 744 (5th Cir. 1975).

In *Farrell v. State,* 317 So.2d 142 (Fla. 1st DCA 1975) a violation of the Defendant's due process rights was held to occur although the destruction of the evidence on the part of the State was found to be unintentional. In *Farrell:*

> On the night of the Defendant's arrest, he had certain conversations with undercover agent L. L. Vipperman under the direction of The State Attorney. Attached to the person of Agent Vipperman was an electronic device which transmitted the verbal negotiations between the agent and the Defendant to another Task Force agent stationed nearby who recorded these negotiations on tapes . . . Some time after the completion of their

> investigation . . . the tape was again used in another unrelated investigation, during the course of which, the portion containing the conversations between Agent Vipperman and the Defendant was played over and thus, erased.

Id. at 143.

The Defendant's counsel in Farrell, made no claim that the destruction of the evidence was done intentionally or with the intent to deprive the Defendant of any substantive or procedural rights or to impede the preparation of his defense. However, the Defendant argued that the tapes would have been beneficial to him in the cross-examination at trial of the State Task Force agents and would have enabled him to impeach them or cast doubt upon their credibility. Likewise, the Defendant in the instant cause respectfully contends that he has been hindered in the preparation of his defense by the destruction of material evidence which could well have been used by defendant in order to show that prints other than his own were on the seized money, or to otherwise challenge the credibility of the State's witnesses.

The Court in *Farrell v. State, Id.,* concluded:

> Under the stipulated facts, defendants were denied due process. It is our opinion that our federal and state constitutions protect a person charged with a crime from acts which might be practiced in the name of justice by police and prosecuting officers to hinder an accused in the effective presentation of his defense. This abuse must not and will not be permitted.

Id. at 144.

In *Stipp v. State,* 371 So.2d 712 (Fla. 4th DCA 1979), the Appellant was tried for possession of cocaine. Before trial, he moved to suppress evidence by testimony or otherwise relating to a state chemist's opinion as to whether the seized substance was illegal cocaine.

> The reason he urged the suppression was because he was prevented from examining and having tested by his own expert a portion of the alleged illegal substance as he is normally permitted to do under Florida Rule of Criminal Procedure 3.220(a)(1)(vi). The reason he was prevented from testing the substance was the intentional, but not willful, destruction of all of the seized substance by the State chemist."

Stipp v. State, Id. at 713.

The Court, in *Stipp, Id.* after determining that the destruction of the evidence was not necessary held:

> It is wrong for the state to unnecessary destroy the most critical inculpatory evidence in its case against an accused and then be allowed to introduce essentially irrefutable testimony of the most damaging nature against the accused. It is wrong because it violates a most fundamental right of due process, constitutionally mandated in Florida and the United States as held in Johnson v. State, 249 So.2d 470 (Fla. 3rd DCA 1971) and affirmed in State v. Johnson, 280 So.2d 673 (Fla. 1973)

In *State v. Ritter*, 448 So.2d 512 (Fla. 5th DCA 1984), the trial court dismissed the first three counts of the information when the State was unable to produce the sample of cocaine involved in those counts, following defense counsels' timely discovery motions pursuant to Florida Rule of Criminal Procedure 3.220(a)(1)(vi), and the trial court orders to produce. The Court found that there was no indication in the record that the state deliberately or willfully spirited off the cocaine to defeat the appellant's discovery rights. But it did indicate the state negligently allowed the cocaine to be returned to D.E.A., thus rendering it *unable at a later time to respond to defense counsel's discovery motions. Id.* at 514. The Court held:

> The actual nature of the substance in a defendant's possession is a key and material element in proving the crime of possession charged in Count III. It would be fundamentally unfair, as well as a violation of Rule 3.220, to allow the state to negligently dispose of critical evidence and then offer an expert witness whose testimony cannot be refuted by the defendant.

Id. at 514.

The State, in the instant cause, failed to preserve the money, thereby rendering it unavailable for the Defendant to inspect same pursuant to the Discovery Rules. It is respectfully submitted, that the State's failure to preserve discoverable evidence which may have assisted the defendant in the preparation of his defense requires dismissal of the offenses alleged in the Information.

As recent as August 29, 1984, the Fourth District Court of Appeal, in *Lancaster v. State,* had an opportunity to examine the body of law which was developed as a result of the state's failure to preserve and produce discoverable evidence. *Lancaster* dealt with a case involving a fire in defendant's truck resulting in arson charges against him. The truck was released by the State to the Defendant who materially changed its condition in an attempt to salvage it, before an arrest warrant was issued. The State's investigator was allowed to testify as to the condition of the truck after fire at trial. The Court, held that the defendant's due process rights were violated due to the state's failure to preserve discoverable evidence, as the Defendant had been precluded of the opportunity to examine the truck, which may have assisted him in the preparation of his defense.

> [T]his problem takes on particular significance when the lost evidence requires scientific analysis or expert testimony. In such cases, the courts have often reversed based upon due process and other considerations.
>
> * * *
>
> In the case now before us, the State has urged that we should be guided by language contained in U.S. v. Agurs 427 U.S. 97, 96 S.Ct. 2392, 49 L.Ed.2d 342 (1976), and quoted with favor by the Florida Supreme Court in State v. Sobel, 363 So.2d 324 (Fla. 1978). The state argues that the "mere possiblity" that

> examination of the truck would have assisted Appellant should not result in reversal. We disagree, and in so doing we note that Ritter, Stipp and Counce were all post-Agurs and post-Sobel, yet the results in those cases were unaffected by either the "mere possibility" standard for materiality or the "balancing approach" to prejudice.
>
> We therefore conclude that the appellant's due process rights have been violated.

Lancaster v. State, Id. at 507.

Therefore, the Defendant respectfully submits that he has been deprived of his constitutional privilege to have the State deliver exculpatory evidence into his hands thereby guaranteeing him a fair trial. Even applying the standard of "materiality" or the "balancing approach" standard, Florida law mandates dismissal of the charges against the Defendant. *Lancaster v. State,* 457 So.2d 506, *Id. State v. Johnson,* 280 So.2d 673, *Id.* Further, the evidence in question is of such a nature that the Defendant would be unable to obtain comparable evidence by other reasonably available means. *California v. Trombetta,* ____ U.S. ____, 104 S.Ct. 2528 (1984).

For the foregoing reasons, the Information against the Defendant should be dismissed, and the Defendant so moves.

Respectfully submitted,

/s/ Milton M. Ferrell, Jr.

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I HEREBY CERTIFY that a copy of the foregoing was mailed this 11 day of June, 1985, to: Mr. John Countryman, Assistant State Attorney, 640 Broward County Courthouse, 201 S. E. Sixth Street, Fort Lauderdale, Florida, 33301.

/s/ Milton M. Ferrell, Jr.

BY: MILTON M. FERRELL, JR.

DISTRICT COURT OF APPEAL,
STATE OF FLORIDA
FOURTH DISTRICT

No. 4-86-1024

RONALD GREGORY FARAH,

Appellant,

vs.

STATE OF FLORIDA,

Appellee.

NOTICE OF APPEAL TO THE SUPREME COURT OF THE UNITED STATES

Notice is hereby given that RONALD GREGORY FARAH, the Appellant above-named, hereby appeals to the Supreme Court of the United States from the final order of the district Court of Appeal of Florida, Fourth District, of July 8, 1987, affirming the judgment of conviction, entered herein on April 4, 1986.

This appeal is taken pursuant to 28 U.S.C. Sec. 1257(3).

FERRELL, WILLIAMS
A Professional Association
1920 Miami Center
100 Chopin Plaza
Miami, FL 33131

By: Milton M. Ferrell, Jr.
Milton M. Ferrell, Jr.

87-1062

NO._____

Supreme Court, U.S.
FILED
MAR 7 1988
JOSEPH F. SPANIOL, JR.
CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1987

RONALD GREGORY FARAH

Petitioner,

vs.

STATE OF FLORIDA,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE DISTRICT COURT OF APPEAL OF FLORIDA FOURTH DISTRICT

BRIEF IN OPPOSITION

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QUESTION PRESENTED

(Petitioner's Question Restated)

WHETHER THE TRIAL COURT CORRECTLY DENIED PETITIONER'S MOTION TO DISMISS BASED ON STATE'S FAILURE TO PRESERVE CURRENCY USED IN A "REVERSE-STING" OPERATION, IN VIOLATION OF PETITIONER'S FOURTEENTH AMENDMENT RIGHT, WHERE SUBJECT EVIDENCE WAS NOT THE ONLY EVIDENCE OF PETITIONER'S GUILT.

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OPINION BELOW

The Respondent accepts the Petitioner's statement.

JURISDICTION

The Respondent accepts the Petitioner's statement with one added clarification:

Petition for Certiorari was filed ten days after the time period for filing.

CONSTITUTIONAL PROVISIONS INVOLVED

This case involves the Fourteenth Amendment to the Constitution of the United States.

STATEMENT OF THE CASE

Respondent accepts Petitioner's Statement of the Case with the following additions:

A "reverse-sting" operation commenced on April 8, 1984 and culminated on July 10, 1984 with the arrest of Petitioner and five co-conspirators.

The State's case against Petitioner consisted of Petitioner ordering co-conspirator Cortes to accept delivery of three hundred pounds of cannabis, which Cortes did, with the agreement that the additional three thousand seven hundred pounds would be delivered to a ranch in Miami. Petitioner's recorded statements to undercover police, including in part that, "he was part of an organized crime ring," he had been trafficking in drugs for eight years and would purchase five hundred (500)

pounds of cannabis at two hundred and fifty-five ($255) dollars per pound, immediately, from the officer (Appendix 3).

The State confiscated the currency on July 10, 1984 and deposited the same on July 16, 1984. The request for preservation was not made till August 24, 1984 (Appendix 4).

The State offered to stipulate that Petitioner's fingerprints were not on the currency and would make no mention of the fingerprints at trial.

REASON TO DENY THE WRIT

THE TRIAL COURT CORRECTLY DENIED PETITIONER'S MOTION TO DISMISS BASED ON STATES DEPOSITING OF CURRENCY USED IN A "REVERSE-STING" OPERATION SINCE THE MONEY WAS IMMATERIAL TO GUILTY OR INNOCENCE AND EVIDENCE OF PETITIONER'S GUILT WAS OVERWHELMING.

Initially it must be pointed out that Petitioner attempts to mislead this Court by claiming that the currency involved, to wit: forty-eight thousand dollars is the only evidence that establishes Petitioner's guilt. Quite to the contrary, not only is the evidence against Petitioner <u>over-whelming</u>, the subject evidence is not a material element to either of the charged crimes, i.e. Trafficking in Cannabis, and Conspiracy to Traffic. In light of all the evidence against Petitioner which will be presented below, the question before this Court is one that has been asked and answered repeatedly in the past from <u>Brady</u>

v. Maryland, 373 U.S. 83, 83 S.Ct. 1194, 10 L.Ed.2d 215 (1963) to United States v. Bagley, 473 U.S. 667, 87 L.Ed.2d 481, 105 S.Ct. 3375 (1985). Does this alleged exculpatory evidence possess the required characteristics of materiality as defined in Bagley, supra and the "uniqueness" as defined in California v. Trombetta, 476 U.S. 479, 81 L.Ed.2d 413, 104 S.Ct. 2528 (1984)? Respondent would submit that this evidence falls far short of the mark on both requirements.

Petitioner claims that the State withheld evidence from the Petitioner in violation of his constitutional rights as defined by this Honorable Court in Brady, supra. 'Brady evidence' is that which is favorable to the accused and is material to either guilt or punishment. Id. Material evidence has been articulated in Bagley, supra:

> The evidence is material only if there is a reasonable probability that had the evidence been disclosed to the defense, the result of the proceeding would have been different. A "reasonable probability" is a probability sufficient to undermine confidence in the outcome.

Id. at 87 L.Ed.2d 481, 494. The applicability of Brady has been further defined in Trombetta, supra:

> ...evidence must both possess an exculpatory value that was apparent before the evidence was destroyed, and be of such a nature that the defendant would be unable to obtain comparable evidence by other reasonably available means.

Id. at 81 L.Ed.2d 413, 422.

Under the guidelines formulated in the decisions set forth above, it is clear that the Florida Fourth District Court of Appeal correctly affirmed the trial

court's decision to deny Petitioner's Motion to Dismiss.

The standard of materiality in Bagley, supra makes relevant the question, "what other evidence does the State have"? Patterson v. Black, 791 F.2d 107 (8th Cir. 1986), cert. denied, 107 S.Ct. 890. In Patterson, supra the prosecution failed to disclose the results of a test performed on the victim's keys which were allegedly used to scratch the would-be attacker. The results of the test were negative, meaning no skin or blood was present. .The district court, as well as the Eighth Circuit, citing Bagley, found that there was sufficient incriminating evidence to establish guilt. Id. at 110-111. The negative test results did not explain away the rest of the evidence. Id.

In the case sub judice undercover officers of the Fort Lauderdale Police

Department have Petitioner on tape discussing his organized crime ring and their extensive narcotics activities. Petitioner is on tape telling undercover officers that Petitioner was part of an organized crime ring that could "move" twenty thousand pounds of marijuana per week (Appendix 3). Petitioner stated to undercover officers that he would buy five hundred pounds of marijuana, at a price of two hundred and fifty-five dollars per pound, immediately. Petitioner also stated he had been trafficking in drugs locally for eight years and such information could be verified with any one (Appendix 3-4).

The record contains two depositions of undercover agent Officer Tiderington taken on October 10, 1984 and April 4, 1985. There are taped conversations between the officer and the Petitioner discussing the purchase of four thousand (4,000) pounds of

marijuana with an initial sale of three hundred (300) pounds as a sample. Petitioner ordered one of the co-defendants, Cortes, to accept delivery of the three hundred (300) pounds which in fact Cortes did (Appendix 4). Once the three hundred (300) pounds of marijuana was given to Cortes, the Petitioner instructed the undercover officer to pay off the co-conspirators with Petitioner's money. Petitioner and the co-defendants were then arrested.

A conspiracy consists of an express or implied agreement between to or more persons to commit a crime. Voton v. State, 509 So.2d 1291 (Fla. 4th DCA 1987); United States v. Sopczak, 742 F.2d 1119 (8th Cir. 1984). It is Petitioner's statements to the undercover agents, rather than the money that establishes his guilt. No further acts by Petitioner are required.

LaPolla v. State, 504 So.2d 1353 (Fla. 4th DCA 1987). United States v. Fernandez, 797 F.2d 943 (11th Cir. 1986) ____ U.S. cert. denied, 107 S.Ct. 3230. Petitioner, acting as a broker in a "reverse-sting" operation between undercover agents and potential buyers is guilty of conspiracy. Wiggins v. State, 460 So.2d 483 (Fla. 1st DCA 1984); United States v. Adams, 799 F.2d 665, rehearing denied 812 F.2d 1415, cert. denied, Morrell v.United States, 107 S.Ct. 2464, 95 L.Ed.2d 873 (1987).

Trafficking may be similarly proven. Under the Doctrine established in Pinkerton v. United States, 328 U.S. 640, 66 S.Ct. 1180, 90 L.Ed.1489 (1946) each member of a conspiracy is criminally liable for any crime committed by co-conspirators during the course of and in furtherance of the conspiracy. Florida courts have upheld the "Pinkerton Doctrine" on numerous occasions,

stating the acts of one co-conspirator are attributable to all. Resnick v. State, 287 So.2d 24 (Fla. 1974). Every act of a co-conspirator is original evidence against each. Damon v. State, 289 So.2d 270 (Fla. 1973). All that is necessary is that the acts be the natural and probable outcome of the common design. Martinez v. State, 413 So.2d 429 (Fla. 3rd DCA 1982). Once a conspiracy is established, an act done by one may be proved against each. Boyd v. State, 389 So.2d 642 (Fla. 2nd DCA 1980). It is a question of fact for a jury to decide whether there exists a conspiracy, and if the act is a natural and probable consequence thereof. Martinez, supra. Once Defendant participated in the conspiracy, he had constructive possession of the contraband found in possession of his co-conspirator. Priestly v. State, 450 So.2d 289 (Fla. 4th DCA 1985). Conse-

quently under both Florida and Federal law, there was sufficient evidence to establish Petitioner's guilt apart from the currency.

Whether or not Petitioner's fingerprints are on the money used to purchase the drugs is not important. The absence of his fingerprints would not explain any of his inculpatory statements (most of which are taped) and his actions during the drug buy. Petitioner's fingerprints could very well not have been on the money considering the following: Petitioner had five other co-conspirators; anyone of them or combination of them could have handled the money. Furthermore, Detective Tiderington in his deposition on April 4, 1985 stated that the Petitioner showed him a bag containing money. Therefore Petitioner could have handled the bag only, never touching the currency. Consequently, the lack of his fingerprints on the drug money

could not possibly have underminded the confidence in the outcome. Bagley, supra; Patterson, supra.

Failure to preserve forty-eight thousand ($48,000) dollars in United States currency was not a violation of the Federal Constitution. In Trombetta, supra, this Honorable Court qualified the State's duty to preserve evidence to such evidence that might be expected to play a significant role in suspect's defense. The Court found that the police were acting in good faith and in accord with their normal practice in not preserving breath samples. Id. at 81 L.Ed.2d 413, 422.

The State or the police cannot be expected to preserve every shred of evidence that may be linked to a case. Such a duty is not pratical nor would it preserve the ends of justice. The State in the case sub judice could not have

anticipated the need for preservation because of the previously demonstrated lack of materiality in the evidence. Bagley, Patterson. There is no evidence of any bad faith or conscious effort to circumvent the defense by destroying exculpatory evidence. It's not as if the State tested for fingerprints and then tried to hide inculpatory test results. The money was confiscated on July 10, 1984 and deposited on July 16, 1984. A motion to preserve the money was not filed until some five weeks later on August 24, 1984. (Appendix 4.).

Applying the facts of this case to the two-part test set forth in Trobetta, 81 L.Ed.2d 413, 422, there was no constitutional violation. 1.) The money did not possess any apparent exculpatory value prior to being deposited, since no fingerprint test was ever conducted. Consequently the results of any test would

be mere speculation. 2.) The Petitioner was not only able to obtain but was offered comparable evidence by the State. The State was willing to stipulate that Petitioner's fingerprints were not on the money and would make no mention of any fingerprints on the money during the trial. (Appendix 4).

In United States v. Dela Espriella, 781 F.2d 1432 (9th Cir. 1986), the United States Court of Appeal applied the two-part test of Trombetta, supra to facts similar to the case sub judice. The Government deposited currency allegedly used by the defendants in a crime before the defendant had a chance to conduct an independent test on the money. The Government claims that the scent of cocaine was detected on the currency through a narcotics sniffing dog. The defendant claims he was denied an opportunity to

examine the money himself. The district court and the Court of Appeal found that both parts of the Trombetta test were not met. Respondent would concede that the lack of apparent exculpatory value of evidence is greater when one test has already been conducted by the State and the results are inculpatory. Since no test was conducted at all in the case sub judice the lack of or presence of exculpatory evidence is not as clear. However, since the State was willing to stipulate to the exact evidence sought by the Petitioner, there can be no claim of constitutional error.

In sum this Court has answered the issue presented here numerous times. The trial court and the Florida Fourth District Court of Appeal has decided this case in a manner consistent with these prior decisions. Therefore this Court should not exercise its jurisdiction.

CONCLUSION

WHEREFORE, based on the foregoing reasons and authorities, the State of Florida, Respondent, respectfully requests that the Petitioner's Petition for Writ of Certiorari be denied

Respectfully submitted,
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COUNSEL FOR RESPONDENT.

APPENDIX

IN THE CIRCUIT COURT OF THE
SEVENTEENTH JUDICIAL CIRCUIT
BROWARD COUNTY, FLORIDA

CASE NO: 84-7580 CF

JUDGE: LAWRENCE L. KORDA

STATE OF FLORIDA :

Plaintiff, :

vs. STATE RESPONSE TO DEFENDANT'S MOTION TO DISMISS

RONALD GREGORY FARAH et. al, :

Defendant. :

COMES NOW MICHAEL J. SATZ, State Attorney of the Seventeenth Judicial Circuit of Florida, by and through his undersigned Assistant State Attorney, and requests this Honorable Court to deny Defendant's Motion to Dismiss and as grounds states:

1. Upon Defendant's arrest July 10, 1984, approximately forty-eight thousand ($48,000) dollars in U.S. currency and approximately three hundred (300) pounds of marijuana were seized by officers of the Fort Lauderdale Police Department.

2. The Defendant was charged with Conspiracy to Traffic in Cannabis over one thousand (1,000) pounds and Trafficking in Cannabis an amount of three hundred (300) pounds.

3. The Defendant, along with co-conspirators met with Fort Lauderdale Police Department officers acting in an undercover capacity in a "reverse-sting" operation, and did then and there conspire, combine, or agree to traffic in cannabis and did possess actually or constructively cannabis in an amount of approximately three hundred (300) pounds.

4. Defendant did conspire, in that he stated to undercover officers with said statements being recorded by a Unitel Device as follows:

a) He was part of an organized crime ring headed by a man named "Paco",

b) That said ring was heavily into drug trafficking,

c) That said ring owned four ranches used for the storage and sale of controlled substances,

d) That said ring could "move" twenty thousand (20,000) pounds of cannabis per week,

e) That said ring would purchase five hundred (500) pounds of cannabis, at a price of two hundred and fifty-five ($255) dollars per pound, from undercover officers immediately,

f) That Defendant had been trafficking in drugs locally for eight (8)

years, and that undercover officers could "check him out" with anyone.

5. That Defendant did order his "man" to cooperate by instructing him to accept delivery of three hundred (300) pounds of cannabis, and co-defendant Cortes did in fact accept delivery.

6. That all monies confiscated during the drug transaction were deposited on July 16, 1984, and the Court order of September 21, 1984, providing for an independent analysis of said monies was impossible to comply with.

7. That the State is willing to stipulate that Defendant's fingerprints were not on said monies and will make no mention of fingerprints being on said monies at trial.

8. That no prejudice has attached to Defendant as a result of his being unable to have said monies independently analyzed.

WHEREFORE, the State respectfully moves this Honorable Court to Affirm the State's information.

MICHAEL J. SATZ
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